UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,960	11/21/2003	Keith Raniere	FIRS-3288	4431

7590 10/05/2005

Kenneth C. Booth
Schmeiser, Olsen & Watts LLP
18 East University Drive, #101
Mesa, AZ 85201

EXAMINER	
LACYK, JOHN P	

ART UNIT	PAPER NUMBER
3736	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/718,960	RANIERE, KEITH	
	Examiner	Art Unit	
	John P. Lacyk	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 July 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-88* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *17,18,25,31-34,43,58,59,67,73-76,79,80 and 84-86* is/are allowed.

6)☒ Claim(s) *1-16,19-24,26-30,35-42,44-57,60-66,68-72,77,78 and 81-83* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Claims 37-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 is directed to guiding the sleeper between NREM and REM sleep, however claim 38 appears to be for directing the sleeper into NREM. Also it is unclear if the step of generating a sensory stimulus of claim 38 is the same generating step of claim 37 or a different generating step.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-16, 21-24, 29, 37-42, 47, 51-57, 63-66, 71, 81-83 rejected under 35 U.S.C. 103(a) as being unpatentable over Monroe (3,884,218) in view of Kitado et al (5,167,610).

Monroe discloses a method and device for inducing or leading a person into various stages of sleep including REM sleep. The device generates an audio signal (pacing signal to establish a rapport with the user) and modulates the signal with the EEG sleep patterns to induce various stages of sleep. Monroe discloses the claimed device except for monitoring at least one physiological characteristic of a sleeper. Kitado et al discloses a device that teaches monitoring a biological signal that is used to induce sleep in a person. Therefore a modification of Monroe such that the person is

monitored while sleep is being induced would have been obvious in view of Kitado et al which clearly shows that it is well known to monitor a person to induce sleep. Further it would have been obvious to monitor and continue monitoring the person throughout the procedure in order to properly pace or lead the person into different sleep stages as desired and be able to make sure what stage the person is actually currently in and make sure when they have been led into the next stage.

4. Claims 26-28, 30, 35-36, 44-46, 48-50, 62, 68-70, 72, 77-78, 87-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monroe and Kitado et al in view of Searfoss, III.

Monroe discloses the claimed method and apparatus except for specifically teaching monitoring more than one physiological characteristic and using wireless technology. Searfoss, III discloses a similar device that monitors a physiological characteristic and induces a sleep mode, a sleep help mode and a wake-up mode. Searfoss, III teaches (paragraph 0017) that the sensors may measure more than one characteristic or body condition. Therefore a modification of Monroe to include monitoring more than one characteristic would have been obvious in view of Searfoss, III since this would allow for a more accurate and detailed evaluation of the specific state of the user. Also Searfosse, III teaches (paragraph 0017) that the device is usable with either wired, wireless or infrared transmitters, clearly showing that wireless technology is known to be used with such devices. Therefore a modification of Monroe to use wireless technology

would have been obvious since this would allow for a less cumbersome and more comfortable connection of the device to the body of the user. With respect to claims 26-28, 30, 44-46, 48, 68-70 and 72 it is well known to use different senses (touch, taste, sound, sight, olfactory) to stimulate a user, therefore to use any of the senses to stimulate the user to the desired sleep stage would have been obvious.

5. Claims 19-20 and 60-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monroe '218 in view of Monroe (5,356,368).
Monroe '368 discloses a device for inducing desired states during a sleep pattern and teaches (column 3, lines 13-29) that the device can lead the user through a desired sleep period having a desired duration. Monroe '368 also teaches (column 3, lines 37-41; column 5, lines 47-59) that the device directs the user to a stage near the awake stage shortly before a desired wake-up time. Therefore a modification such that Monroe '218 is modified to include setting a sleep pattern duration and directing the user to a stage near the awake stage shortly before a wake-up time would have been obvious since this would allow the device to be used more effectively and give the user a better sleep while allowing for easier wake up.

6. Applicant's arguments with respect to claims 1-16, 19-24, 26-30, 35-42, 44-57, 60-66, 68-72, 77-78, 81-83, 87-88 have been considered but are moot in view of the new ground(s) of rejection.

7. Claims 17-18, 25, 31-34, 43, 58-59, 67, 73-76, 79-80, 84-86 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Lacyk whose telephone number is 571-272-4728. The examiner can normally be reached on Mon-Fri, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John P Lacyk
Primary Examiner
Art Unit 3736

J.P. Lacyk